IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.246 OF 2007

Srikrishna Creations, through its
C.A. Shri.Vinod Ratilal Shah ...Applicant.

Versus

State of Maharashtra
and 3 Ors. ...Respondents.

....

Mr.Vinod R. Shah, Applicant in-person.
Mr.D.P.Adsule, APP, for State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 26th February, 2007.

P.C.:

1. Heard the Applicant Mr.Vinod R. Shah who is the Power of Attorney Holder of the original complainant Mr.Umakant R. Joshi, and the learned APP for the State.

2. Being aggrieved by the judgment and order dated 6.12.2006 passed by the learned Metropolitan Magistrate, 31st Court, Vikroli, Mumbai in C.C.No.160/C/2002, this application for leave to file appeal against acquittal has been filed.

3. By the said judgment and order, the learned Magistrate acquitted the respondent-accused under Section 138 of N.I.Act.

4. The main ground for acquittal is that the cheque had been deposited by the complainant on three occasions and three notices came to be sent by the complainant to the respondent-accused i.e. by letters dated 11.8.1995, 11.9.1995 and 15.2.1996. The complaint came to be filed on the basis of the notice dated 15.2.1996. The learned Magistrate held that though the cheque can be presented more than one time during the period of its validity, but under section 142-B of the N.I.Act the complainant has only one opportunity to file a complaint for dishonour of cheque and that too within one month from the date that the cause of action arises. The learned Magistrate held that once the payee gives notice under section 138 of N.I.Act, he forfeits the right to redeposit the dishonoured cheque because in case of failure of the drawer to pay the money within

stipulated time the drawer would be liable for the offence and the cause of action for filing the complaint arises.

5. The complainant Mr.Vinod R.Shah has submitted that the letter dated 11.8.1995 does not constitute notice and hence no cause of action can be said to arise therefrom. Even if one assumes that letter dated 11.8.1995 does not constitute notice, admittedly, the complainant sent two notices i.e. on 11.9.1995 and 15.2.1996. As far as notice dated 11.9.1995 is concerned the bank informed the complainant on 26.8.1995 that the cheque was dishonoured and pursuant to that, notice dated 11.9.1995 had been sent. The demand in the said notice was not complied. The said notice is annexed as Exhibit "C" to this Application. On perusal of the said document it is seen that it constitutes notice as envisaged under Section 138 of N.I.Act. However, thereafter the complainant has again redeposited the cheque on 5.2.1996 and when the same was dishonoured notice dated 15.2.1996 was sent by him to the

respondent-accused. On the basis of non-compliance of demand in pursuance of the notice dated 15.2.1996, the complaint was presented on 30.3.1996. Even if the case of the complainant is accepted the cause of action would arise on account of the notice dated 11.9.1995. Hence the learned Magistrate has rightly held that the complaint on the basis of notice dated 15.2.1996 cannot be entertained. No case is made out for interference. Application is rejected.

(SMT.V.K.TAHILRAMANI,J.)